

## Commodity Futures Trading Commission

## Pt. 190, App. B

Dated: \_\_\_\_\_  
(Signed) \_\_\_\_\_

Penalty for Presenting Fraudulent Claim.  
Fine of not more than \$5,000 or imprisonment for not more than five years or both—  
Title 18, U.S.C. 152.

(Approved by the Office of Management and Budget under control number 3038-0021)

[48 FR 8739, Mar. 1, 1983; 48 FR 15122 and 15123, Apr. 7, 1983, as amended at 67 FR 58298, Sept. 13, 2002; 75 FR 17303, Apr. 6, 2010]

### APPENDIX B TO PART 190—SPECIAL BANKRUPTCY DISTRIBUTIONS

#### FRAMEWORK 1—SPECIAL DISTRIBUTION OF CUSTOMER FUNDS WHEN FCM PARTICIPATED IN CROSS-MARGINING

The Commission has established the following distributional convention with respect to customer funds held by a futures commission merchant (FCM) that participated in a cross-margining (XM) program which shall apply if participating market professionals sign an agreement that makes reference to this distributional rule and the form of such agreement has been approved by the Commission by rule, regulation or order:

All customer funds held in respect of XM accounts, regardless of the product that customers holding such accounts are trading, are required by Commission order to be segregated separately from all other customer segregated funds. For purposes of this distributional rule, XM accounts will be deemed to be commodity interest accounts and securities held in XM accounts will be deemed to be received by the FCM to margin, guarantee or secure commodity interest contracts. The maintenance of property in an XM account will result in subordination of the claim for such property to certain non-XM customer claims and thereby will operate to cause such XM claim not to be treated as a customer claim for purposes of the Securities Investors Protection Act and the XM securities to be excluded from the securities estate. This creates subclasses of customer accounts, an XM account and a non-XM account (a person could hold each type of account), and results in two pools of customer segregated funds: An XM pool and a non-XM pool. In the event that there is a shortfall in the non-XM pool of customer class segregated funds and there is no shortfall in the XM pool of customer segregated funds, all customer net equity claims, whether or not they arise out of the XM subclass of accounts, will be combined and will be paid pro rata out of the total pool of available XM and non-XM customer funds. In the event that there is a shortfall in the XM pool of customer segregated funds and there is no shortfall in the non-XM pool of customer

segregated funds, then customer net equity claims arising from the XM subclass of accounts shall be satisfied first from the XM pool of customer segregated funds, and customer net equity claims arising from the non-XM subclass of accounts shall be satisfied first from the non-XM customer segregated funds. Furthermore, in the event that there is a shortfall in both the non-XM and XM pools of customer segregated funds: (1) If the non-XM shortfall as a percentage of the segregation requirement in the non-XM pool is greater than or equal to the XM shortfall as a percentage of the segregation requirement in the XM pool, all customer net equity claims will be paid pro rata; and (2) if the XM shortfall as a percentage of the segregation requirement in the XM pool is greater than the non-XM shortfall as a percentage of the segregation requirement of the non-XM pool, non-XM customer net equity claims will be paid pro rata out of the available non-XM segregated funds, and XM customer net equity claims will be paid pro rata out of the available XM segregated funds. In this way, non-XM customers will never be adversely affected by an XM shortfall.

The following examples illustrate the operation of this convention. The examples assume that the FCM has two customers, one with exclusively XM accounts and one with exclusively non-XM accounts. However, the examples would apply equally if there were only one customer, with both an XM account and a non-XM account.

#### 1. Sufficient Funds to Meet Non-XM and XM Customer Claims:

	Non-XM	XM	Total
Funds in segregation	150	150	300
Segregation requirement .....	150	150	300
Shortfall (dollars) .....	0	0	.....
Shortfall (percent) .....	0	0	.....
Distribution .....	150	150	300

There are adequate funds available and both the non-XM and the XM customer claims will be paid in full.

#### 2. Shortfall in Non-XM Only:

	Non-XM	XM	Total
Funds in segregation	100	150	250
Segregation requirement .....	150	150	300
Shortfall (dollars) .....	50	0	.....
Shortfall (percent) .....	50/100=50%	0	.....
Pro rata (percent) .....	100/250=40%	150/250=60%	.....
Pro rata (dollars) .....	40	120	.....
Distribution .....	100	150	250

Due to the non-XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Each customer will receive his pro rata share

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of the funds available, or 50% of the \$250 available, or \$125.

**3. Shortfall in XM Only:**

	Non-XM	XM	Total
Funds in segregation	150	100	250
Segregation requirement .....	150	150	300
Shortfall (dollars) .....	0	50	.....
Shortfall (percent) .....	0	50/150=33.3	.....
Pro rata (percent) .....	150/300=50	150/300=50	.....
Pro rata (dollars) .....	125	125	.....
Distribution .....	150	100	250

Due to the XM account, there are insufficient funds available to meet both the non-XM and the XM customer claims in full. Accordingly, the XM funds and non-XM funds are treated as separate pools, and the non-XM customer will be paid in full, receiving \$150 while the XM customer will receive the remaining \$100.

**4. Shortfall in Both, With XM Shortfall Exceeding Non-XM Shortfall:**

	Non-XM	XM	Total
Funds in segregation	125	100	225
Segregation requirement .....	150	150	300
Shortfall (dollars) .....	25	50	.....
Shortfall (percent) .....	25/150=16.7	50/150=33.3	.....
Pro rata (percent) .....	150/300=50	150/300=50	.....
Pro rata (dollars) .....	112.50	112.50	.....
Distribution .....	125	100	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the XM shortfall exceeds the non-XM shortfall. The non-XM customer will receive the \$125 available with respect to non-XM claims while the XM customer will receive the \$100 available with respect to XM claims.

**5. Shortfall in Both, With Non-XM Shortfall Exceeding XM Shortfall:**

	Non-XM	XM	Total
Funds in segregation	100	125	225
Segregation requirement .....	150	150	300
Shortfall (dollars) .....	50	25	.....
Shortfall (percent) .....	50/150=33.3	25/150=16.7	.....
Pro rata (percent) .....	150/300=50	150/300=50	.....
Pro rata (dollars) .....	112.50	112.50	.....
Distribution .....	112.50	112.50	225

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall exceeds the XM shortfall. Each customer will receive 50% of the \$225 available, or \$112.50.

**6. Shortfall in Both, Non-XM Shortfall = XM Shortfall:**

	Non-XM	XM	Total
Funds in segregation	100	100	200
Segregation requirement .....	150	150	300

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	Non-XM	XM	Total
Shortfall (dollars) .....	50	50	.....
Shortfall (percent) .....	50/150=33.3	50/150=33.3	.....
Pro rata (percent) .....	150/300=50	150/300=50	.....
Pro rata (dollars) .....	100	100	.....
Distribution .....	100	100	200

There are insufficient funds available to meet both the non-XM and the XM customer claims in full, and the non-XM shortfall equals the XM shortfall. Each customer will receive 50% of the \$200 available, or \$100.

These examples illustrate the principle that pro rata distribution across both accounts is the preferable approach except when a shortfall in the XM account could harm non-XM customers. Thus, pro rata distribution occurs in Examples 1, 2, 5 and 6. Separate treatment of the XM and non-XM accounts occurs in Examples 3 and 4.

**FRAMEWORK 2—SPECIAL ALLOCATION OF SHORTFALL TO CUSTOMER CLAIMS WHEN CUSTOMER FUNDS ARE HELD IN A DEPOSITORY OUTSIDE OF THE UNITED STATES OR IN A FOREIGN CURRENCY**

The Commission has established the following allocation convention with respect to customer funds segregated pursuant to the Act and Commission rules thereunder held by a futures commission merchant (“FCM”) or derivatives clearing organization (“DCO”) in a depository outside the United States (“U.S.”) or in a foreign currency. The maintenance of customer funds in a depository outside the U.S. or denominated in a foreign currency will result, in certain circumstances, in the reduction of customer claims for such funds. For purposes of this proposed bankruptcy convention, sovereign action of a foreign government or court would include, but not be limited to, the application or enforcement of statutes, rules, regulations, interpretations, advisories, decisions, or orders, formal or informal, by a federal, state, or provincial executive, legislature, judiciary, or government agency. If an FCM enters into bankruptcy and maintains customer funds in a depository located in the U.S. in a currency other than U.S. dollars or in a depository outside the U.S., the following allocation procedures shall be used to calculate the claim of each customer.

**I. REDUCTION IN CLAIMS FOR GENERAL SHORTFALL**

*A. Determination of losses not attributable to sovereign action*

1. Convert each customer's claim in each currency to U.S. Dollars at the exchange rate in effect on the Final Net Equity Determination Date, as defined in §190.01(s) (the “Exchange Rate”).

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2. Determine the amount of assets available for distribution to customers. In making this calculation, *include* customer funds that would be available for distribution but for the sovereign action.

3. Convert the amount of assets available for distribution to U.S. Dollars at the Exchange Rate.

4. Determine the Shortfall Percentage that is *not* attributable to sovereign action, as follows:

$$\text{Shortfall Percentage} = \left( 1 - \left[ \frac{\text{Total Customer Assets}}{\text{Total Customer Claims}} \right] \right)$$

### *B. Allocation of Losses Not Attributable to Sovereign Action*

1. Reduce each customer's claim by the Shortfall Percentage.

### II. REDUCTION IN CLAIMS FOR SOVEREIGN LOSS

#### *A. Determination of Losses Attributable to Sovereign Action ("Sovereign Loss")*

1. If any portion of a customer's claim is required to be kept in U.S. dollars in the U.S., that portion of the customer's claim is not exposed to Sovereign Loss.

2. If any portion of a customer's claim is authorized to be kept in only one location and that location is:

a. The U.S. or a location in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A location in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

3. If any portion of a customer's claim is authorized to be kept in only one currency and that currency is:

a. U.S. dollars or a currency in which there is no Sovereign Loss, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. A currency in which there is Sovereign Loss, then that entire portion of the customer's claim is exposed to Sovereign Loss.

4. If any portion of a customer's claim is authorized to be kept in more than one location and:

a. There is no Sovereign Loss in any of those locations, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those locations, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those locations, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss in each such location.

5. If any portion of a customer's claim is authorized to be kept in more than one currency and:

a. There is no Sovereign Loss in any of those currencies, then that portion of the customer's claim is not exposed to Sovereign Loss.

b. There is Sovereign Loss in one of those currencies, then that entire portion of the customer's claim is exposed to Sovereign Loss.

c. There is Sovereign Loss in more than one of those currencies, then an equal share of that portion of the customer's claim will be exposed to Sovereign Loss.

#### *B. Calculation of Sovereign Loss*

1. The total Sovereign Loss for each location is the difference between:

a. The total customer funds deposited in depositories in that location and

b. The amount of funds in that location that are available to be distributed to customers, after taking into account any sovereign action.

2. The total Sovereign Loss for each currency is the difference between:

a. The value, in U.S. dollars, of the funds held in that currency on the day before the sovereign action took place and

b. The value, in U.S. dollars, of the funds held in that currency on the Final Net Equity Determination Date.

#### *C. Allocation of Sovereign Loss*

1. Each portion of a customer's claim exposed to Sovereign Loss in a location will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that location}}{\text{All portions of customer claims exposed to loss in that location}}$$

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2. Each portion of a customer's claim exposed to Sovereign Loss in a currency will be reduced by:

$$\text{Total Sovereign Loss} \times \frac{\text{Portion of the customer's claim exposed to loss in that currency}}{\text{All portions of customer claims exposed to loss in that currency}}$$

3. A portion of a customer's claim exposed to Sovereign Loss in a location or currency will not be reduced below zero. (The above calculations might yield a result below zero where the FCM kept more customer funds in a location or currency than it was authorized to keep.)

4. Any amount of Sovereign Loss from a location or currency in excess of the total

amount of funds authorized to be kept in that location or currency (calculated in accord with Section II.1 above) ("Total Excess Sovereign Loss") will be divided among all customers who have authorized funds to be kept outside the U.S., or in currencies other than U.S. dollars, with each such customer claim reduced by the following amount:

$$\text{Total Excess Sovereign Loss} \times \left[ \frac{\left( \text{This customer's total claim} - \text{The portion of this Customer's claim required to be kept in U.S. dollars, in the U.S.} \right)}{\text{Total customer claims} - \text{Total of all customer claims required to be kept in U.S. dollars, in the U.S.}} \right]$$

The following examples illustrate the operation of this convention.

*Example 1.* No shortfall in any location.

Customer	Claim	Location(s) customer has consented to having funds held
A .....	\$50	U.S.
B .....	€50	U.K.
C .....	€50	Germany
D .....	£300	U.K.

  

Location	Actual asset balance
U.S. ....	\$50
U.K. ....	£300
U.K. ....	€50
Germany .....	€50

Note: Conversion Rates: 1 = \$1; £1=\$1.5.

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in U.S. dollars
A .....	\$50	1.0	\$50
B .....	€50	1.0	50
C .....	€50	1.0	50
D .....	£300	1.5	450
Total .....			600.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S. ....	\$50	1.0	\$50	.....	.....	\$50
U.K. ....	£300	1.5	450	.....	.....	450
U.K. ....	€50	1.0	50	.....	.....	50
Germany .....	€50	1.0	50	.....	.....	50

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Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
Total .....	.....	.....	600.00	.....	0	600.00

There are no shortfalls in funds held in any location. Accordingly, there will be no reduction of customer claims.

**CLAIMS:**

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A .....	\$50	\$0	\$50
B .....	50	0	50
C .....	50	0	50
D .....	450	0	450
Total .....	600.00	0.00	600.00

**Example 2. Shortfall in funds held in the U.S.**

Customer	Claim	Location(s) customer has consented to having funds held
A .....	\$100	U.S.
B .....	€50	U.K.
C .....	€100	U.K., Germany, or Japan

  

Location	Actual asset balance
U.S. ....	\$50
U.K. ....	€100
Germany .....	€50

Note: Conversion Rates: €1=\$1.

**REDUCTION IN CLAIMS FOR GENERAL SHORTFALL**

There is a shortfall in the funds held in the U.S. such that only ½ of the funds are available. Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A .....	\$100 .....	1.0 .....	\$100
B .....	€50 .....	1.0 .....	50
C .....	€100 .....	1.0 .....	100
Total .....	.....	.....	250.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S. ....	\$50	1.0	\$50.00	.....	.....	\$50
U.K. ....	€100	1.0	100	.....	.....	100
Germany .....	€50	1.0	50	.....	.....	\$50
Total .....	.....	.....	200.00	.....	.....	200.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage =  $(1 - 200/250) = (1 - 80\%) = 20\%$ .

Reduce each customer's claim by the Shortfall Percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A .....	\$100	\$20.00	\$80.00
B .....	50	10.00	40.00

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
C .....	100	20.00	80.00
Total .....	250.00	50.00	200.00

## REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

There is no shortfall due to sovereign action. Accordingly, the customer claims will not be further reduced.

## CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A .....	\$80 .....	.....	\$80.00
B .....	40 .....	.....	40.00
C .....	80 .....	.....	80.00
Total .....	200.00 .....	0 .....	200.00

*Example 3.* Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action.

Customer	Claim	Location(s) customer has consented to having funds held
A .....	\$150 .....	U.S.
B .....	€100 .....	U.K.
C .....	€50 .....	Germany
D .....	\$100 .....	U.S.
D .....	€100 .....	U.K. or Germany

Location	Actual asset balance
U.S. ....	\$250
U.K. ....	€50
Germany .....	€100

Note: Conversion Rates: €1=\$1.

## REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A .....	\$150 .....	1.0 .....	\$150
B .....	€100 .....	1.0 .....	100
C .....	€50 .....	1.0 .....	50
D .....	\$100 .....	1.0 .....	100
D .....	€100 .....	1.0 .....	100
Total .....	.....	.....	500.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S. ....	\$250	1.0	\$250	.....	.....	\$250
U.K. ....	€50	1.0	50	.....	.....	50
Germany .....	€100	1.0	100	.....	.....	100
Total .....	.....	.....	400.00	.....	0	400.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage =  $(1 - 400/500) = (1 - 80\%) = 20\%$ .

Reduce each customer's claim by the shortfall percentage:

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Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A .....	\$150 .....	\$30.00 .....	120.00
B .....	100 .....	20.00 .....	80.00
C .....	50 .....	10.00 .....	40.00
D .....	200 .....	40.00 .....	160.00
Total .....	500.00 .....	100.00 .....	400.00

## REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

There is no shortfall due to sovereign action. Accordingly, the claims will not be further reduced.

## CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action	Claim after all reductions
A .....	\$120.00 .....	.....	\$120
B .....	80.00 .....	.....	80
C .....	40.00 .....	.....	40
D .....	160.00 .....	0 .....	160
Total .....	400.00 .....	0 .....	400

*Example 4.* Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action.

Customer	Claim	Location(s) where customer has consented to have funds held
A .....	\$50 .....	U.S.
B .....	€50 .....	U.K.
C .....	€50 .....	Germany
D .....	\$100 .....	U.S.
D .....	€100 .....	U.K. or Germany

Location	Actual asset balance
U.S. ....	\$150
U.K. ....	100
Germany .....	100

Notice: Conversion Rates: €1 = \$1; ¥1 = \$0.01, £1 = \$1.5.

## REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A .....	\$50 .....	1.0 .....	\$50
B .....	€50 .....	1.0 .....	50
C .....	€50 .....	1.0 .....	50
D .....	\$100 .....	1.0 .....	100
D .....	€100 .....	1.0 .....	100
Total .....	.....	.....	350.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S. ....	\$150	1.0	\$150	.....	.....	\$150
U.K. ....	€100	1.0	100	.....	.....	100
Germany .....	€100	1.0	100	50%	50	50
Total .....	.....	.....	350.00	.....	50.00	300.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage =  $(1 - 350/350) = (1 - 100\%) = 0\%$ .

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A .....	\$50	0	\$50.00
B .....	50	0	50.00
C .....	50	0	50.00
D .....	200	0	200.00
Total .....	350.00	0.00	350.00

#### REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, only ½ of the funds in Germany are available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A .....	\$50	.....	.....
B .....	.....	\$50	.....
C .....	.....	.....	\$50
D .....	100	.....	100
Total .....	150.00	50.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany (\$50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C .....	\$50/\$150	33.3% of \$50 .....	\$16.67
D .....	100/\$150	66.7% of \$50 .....	33.33
Total .....	.....	.....	50.00

#### CLAIMS AFTER REDUCTIONS:

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A .....	\$50	.....	\$50
B .....	50	.....	50
C .....	50	\$16.67	33.33
D .....	200	33.33	166.67
Total .....	350.00	50.00	300.00

*Example 5.* Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A .....	\$100	U.S.
B .....	€50	U.K.
C .....	€150	Germany
D .....	\$100	U.S.
D .....	£300	U.K.
D .....	€150	U.K. or Germany

  

Location	Actual asset balance
U.S. ....	\$100
U.K. ....	£300
U.K. ....	€200
Germany .....	€150

Conversion Rates: €1=\$1; £1=\$1.5.



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Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A .....	\$100	1.0	\$100
B .....	€50	1.0	50
C .....	€150	1.0	150
D .....	\$100	1.0	100
D .....	£300	1.5	450
D .....	€150	1.0	150
Total .....			1000.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S. ....	\$100	1.0	\$100	.....	.....	\$100
U.K. ....	£300	1.5	450	.....	.....	450
U.K. ....	€200	1.0	200	.....	.....	200
Germany .....	€150	1.0	150	100%	\$150	0
Total .....			900.00	.....	150.00	750.00

Determine the percentage of shortfall that is not attributable to sovereign action: Shortfall Percentage =  $(1 - 900 / 1000) = (1 - 90\%) = 10\%$ .

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A .....	\$100	\$10.00	\$90.00
B .....	50	5.00	45.00
C .....	150	15.00	135.00
D .....	700	70.00	63.00
Total .....	1000.00	100.00	900.00

**REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION**

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A .....	\$100	.....	.....
B .....	.....	\$50	.....
C .....	.....	.....	\$150
D .....	100	450	150
Total .....	200.00	500.00	300.00

Calculation of the allocation of the shortfall due to sovereign action Germany (\$150 shortfall to be allocated):

Customer	Allocation share	Allocation Share of actual shortfall	Actual shortfall allocated
C .....	\$150/\$300	50% of \$150	\$75
D .....	150/\$300	50% of \$150	75
Total .....			150.00

## CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Claim after all reductions
A .....	\$90	.....	\$90
B .....	45	.....	45
C .....	135	\$75	60
D .....	630	75	555
Total .....	900.00	150.00	750.00

*Example 6.* Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, not due to sovereign action, and a shortfall in funds held in the U.S.

Customer	Claim	Location(s) customer has consented to having funds held
A .....	\$50	U.S.
B .....	€50	U.K.
C .....	\$20	U.S.
C .....	€50	Germany
D .....	\$100.	U.S.
D .....	£300	U.K.
D .....	€100	U.K., Germany, or Japan
E .....	\$80	U.S.
E .....	¥10,000	Japan

Location	Actual asset balance
U.S. ....	\$200
U.K. ....	£200
U.K. ....	€100
Germany .....	€50
Japan .....	¥10,000

Conversion Rates: £1 = \$1; ¥1=\$0.01, £1=\$1.5.

## REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A .....	\$50	1.0	\$50
B .....	€50	1.0	50
C .....	\$20	1.0	20
C .....	€50	1.0	50
D .....	\$100.	1.0	100
D .....	€300	1.5	450
D .....	£100	1.0	100
E .....	\$80	1.0	80
E .....	¥10,000	0.01	100
Total .....	.....	.....	1000.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S. ....	\$200	1.0	\$200	.....	.....	\$200
U.K. ....	£200	1.5	300	.....	.....	300
U.K. ....	€100	1.0	100	.....	.....	100
Germany .....	€50	1.0	50	100%	\$50	0
Japan .....	¥10,000	0.01	100	50%	50	50
Total .....	.....	.....	750	.....	100.00	650.00

Determine the percentage of shortfall that is not attributable to sovereign action:

Shortfall Percentage =  $(1 - 750/1000) = (1 - 75\%) = 25\%$ .

Reduce each customer's claim by the shortfall percentage:

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Customer	Claim in U.S.\$	Allocated short-fall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A .....	\$50	\$12.50	\$37.50
B .....	50	12.50	37.50
C .....	70	17.50	52.50
D .....	650	162.50	487.50
E .....	180	45.00	135.00
Total .....	1000.00	250.00	750.00

## REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, none of the money in Germany and only ½ of the funds in Japan are available.

Customer	Presumed location of funds			
	U.S.	U.K.	Germany	Japan
A .....	\$50			
B .....		\$50		
C .....	20		\$50	
D .....	100	450	50	\$50
E .....	80			100
Total .....	250.00	500.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany (\$50 shortfall to be allocated):

Customer allocation	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C .....	\$50/\$100	50% of \$50 .....	\$25
D .....	50/100	50% of 50 .....	25
Total .....			50

Japan (\$50 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
D .....	\$50/\$150	33.3% of \$50 .....	\$16.67
E .....	100/150	66.6% of 50 .....	33.33
Total .....			50.00

## CLAIMS AFTER REDUCTIONS

Customer	Claim in US dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action from Germany	Allocation of shortfall due to sovereign action from Japan	Claim after all reductions
A .....	\$37.50			37.50
B .....	37.50			37.50
C .....	52.50	\$25		27.50
D .....	487.50	25	16.67	445.83
E .....	135.00		33.33	101.67
Total .....	750.00	50.00	50.00	650.00

*Example 7.* Shortfall in funds held outside the U.S., or in a currency other than U.S. dollars, due to sovereign action, where the FCM kept more funds than permitted in such location or currency.

Customer	Claim	Location(s) customer has consented to having funds held
A .....	\$50	U.S.
B .....	50	U.S.
B .....	€50	U.K.
C .....	€50	Germany.

Customer	Claim	Location(s) customer has consented to having funds held
D .....	100.	U.S.
D .....	€100	U.K. or Germany.
E .....	50	U.S.
E .....	€50	U.K.

  

Location	Actual asset balance
U.S. ....	\$250
U.K. ....	€50
Germany .....	€200

Conversion Rates: 1 = \$1.

#### REDUCTION IN CLAIMS FOR GENERAL SHORTFALL

Convert each customer's claim in each currency to U.S. Dollars:

Customer	Claim	Conversion rate	Claim in US\$
A .....	\$50	1.0	\$50
B .....	50	1.0	50
B .....	€50	1.0	50
C .....	€50	1.0	50
D .....	€100.	1.0	100
D .....	€100	1.0	100
E .....	50	1.0	50
E .....	€50	1.0	50
Total .....			500.00

Determine assets available for distribution to customers, converting to U.S. dollars:

Location	Assets	Conversion rate	Assets in U.S. dollars	Shortfall due to sovereign action percentage	Actual shortfall due to sovereign action	Amount actually available
U.S. ....	\$250	1.0	\$250	.....	.....	\$250
U.K. ....	€50	1.0	50	.....	.....	50
Germany .....	€200	1.0	200	100%	200	0
Total .....			500.00	.....	200	300.00

Determine the percentage of shortfall that is not attributable to sovereign

Shortfall Percentage =  $(1 - 500/500) = (1 - 100\%) = 0\%$ .

Reduce each customer's claim by the shortfall percentage:

Customer	Claim in US\$	Allocated shortfall (non-sovereign)	Claim in U.S. dollars after allocated shortfall
A .....	\$50	\$0	\$50.00
B .....	100	0	100.00
C .....	50	0	50.00
D .....	200	0	200.00
E .....	100	0	100.00
Total .....	500.00	0.00	500.00

#### REDUCTION IN CLAIMS FOR SHORTFALL DUE TO SOVEREIGN ACTION

Due to sovereign action, none of the money in Germany is available.

Customer	Presumed location of funds		
	U.S.	U.K.	Germany
A .....	\$50		
B .....	50	50	
C .....			50
D .....	100		100
E .....	50	50	

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Customer	Presumed location of funds		
	U.S.	U.K.	Germany
Total .....	250.00	100.00	150.00

Calculation of the allocation of the shortfall due to sovereign action—Germany (\$200 shortfall to be allocated):

Customer	Allocation share	Allocation share of actual shortfall	Actual shortfall allocated
C .....	\$50/\$150	33.3% of \$200 .....	\$66.67
D .....	\$100/\$150	66.7% of \$200 .....	\$133.33
Total .....			\$200.000

This would result in the claims of customers C and D being reduced below zero.

Accordingly, the claims of customer C and D will only be reduced to zero, or \$50 for C and \$100 for D. This results in a Total Excess Shortfall of \$50.

Actual shortfall	Allocation of shortfall for customer C	Allocation of shortfall for customer D	Total excess shortfall
\$200 .....	\$50	\$100	\$50

This shortfall will be divided among the remaining customers who have authorized funds to be held outside the U.S. or in a currency other than U.S. dollars.

Customer	Total claims of customers permitting funds to be held outside the U.S.	Portion of claim required to be in the U.S.	Allocation share (column B-C/column B Total—all customer claims in U.S.)	Allocation share of actual total excess shortfall	Actual total excess shortfall allocated
B .....	\$100	\$50	\$50/\$200	25% of \$50 .....	\$12.50
C .....	50	0	(1)		0
D .....	200	100	\$100/200	50% of \$50 .....	25
E .....	100	50	50/100	25% of \$50 .....	12.50
Total .....	450.00				50.00

<sup>1</sup> Claim already reduced to \$0.

CLAIMS AFTER REDUCTIONS

Customer	Claim in U.S. dollars after allocated non-sovereign shortfall	Allocation of shortfall due to sovereign action Germany	Allocation of total excess shortfall	Claim after all reductions
A .....	\$50			\$50.00
B .....	100		12.50	87.50
C .....	50	50		0
D .....	200	100	25	75.00
E .....	100		12.50	87.50
Total .....	500.00	150.00	50.00	300.00

[48 FR 8739, Mar. 1, 1983, as amended at 68 FR 5552, Feb. 4, 2003]

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